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Filed : February 18, 2004

REMARKS

Claims 12-24, 34-61, 65, and 67-72 were pending in the application. By this paper, Applicant has amended Claims 34, 46-51, and 57-60, canceled Claims 12-24, 35-45, 55-56, 65, and 67-72 without prejudice, and added new Claims 73-81. Accordingly, Claims 34, 46-54, 57-60 and 73-81 are presented for examination herein.

Request-for-Continued Examination (RCE)

Applicant submits concurrently herewith an RCE for continued prosecution of the above-identified application.

§101 Rejections

Per page 2 of the Final Office Action, Claims 12-20 and 50-54 stand rejected under 35 U.S.C. §101 as failing to meet the requirements of process claims in light of *In re Bilski*. Without commenting on the merit or propriety of the Examiner's rejections, Applicant has by this paper cancelled Claims 12-20 and 50-54 without prejudice, thereby rendering these rejections moot.

Claim Objections

Per page 4 of the Final Office Action, Claims 1-20 are objected-to as reciting "configured to" which the Office believes is "*not positive limitations but only require the ability to so perform.*" While Claims 1-11 and 12-20 are no longer pending in the present application, Applicant has amended the remaining claims to remove this phrase.

§103 Rejections

1. Per page 5 of the Final Office Action, Claims 12-21, 34-46, 50-61, and 67-72 stand rejected under 35 U.S.C. §103(a) as being unpatentable over "*The Use of Dynamically Reconfigurable Protocol Stacks for Streaming Multimedia to Mobile Devices*" by Curran, et al. (2002 IEEE; hereinafter referred to as "Curran"), in view of

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Patki, et al. (U.S. Patent No. 6,944,185; hereinafter referred to as "Patki"). In response thereto, Applicant provides the following remarks.

5 **Claims 12-21** – Without addressing the merit or propriety of the rejection of these claims with respect to Curran and/or Patki, Applicant has by this paper cancelled Claims 12-21 without prejudice, thereby rendering the rejections thereof moot.

10 **Claims 34 and 57-60** – Applicant respectfully traverses the Office's rejection of independent Claim 34 and dependent Claims 57-60 as being unpatentable over Curran in view of Patki.

15 Specifically, with respect to Claim 34, Applicant notes that the Office has failed to indicate where it is believed either reference teaches or suggests (i) each component of the set of first components, the set of second components, and the set of third components being associated with different multiple systems operator (MSO) environments, and/or (ii) in response to a request for a particular application within a given MSO network, assembling and delivering individual ones of the set of first components, the set of second components, and the set of third components associated with the given MSO.

20 Rather, the Office merely asserts that Curran discloses developing first and second components, and Patki discloses developing third components. Even if one were to assume *arguendo* that the assertions that Curran discloses a Chameleon middleware having the functions of the first and second components, and that Patki discloses functionality of the third component recited in Claim 34 are correct (a point which Applicant does not necessarily concede), nowhere does Curran and/or Patki disclose these components comprising sets of components each associated with different MSO environments. Rather, the cited references both merely disclose a single MSO environment. Likewise, neither reference discloses a request for a particular application in a given MSO network causing assembly and delivery of individual ones of the first set, second set and third set of components associated with the given MSO.

However, in order to further distinguish the invention of Claim 34, Applicant has by this paper amended the claim to recite that (i) each component of the set of first components, the set of second components, and the set of third components is associated with an individual one of a plurality of different multiple systems operator (MSO) environments, and that (ii) in response to a request for a particular application from a CPE within an individual one of the plurality of different MSO environments, the computer program of the head-end apparatus further selects for assembly and delivery individual ones of the set of first components, the set of second components, and the set of third components the selection comprising selection of individual ones of the sets specific to the individual one of the plurality of different MSO environments. Support for these amendments may be found at, *inter alia*, page 23, lines 5-10 and lines 23-31 and page 24, lines 13-15 of Applicant's specification as filed.

Neither Curran nor Patki teaches or suggests the aforementioned limitations. Rather, as noted above, both references are specifically aimed at providing functionalities within a single MSO environment. More specifically, the Office merely provides citation as to where it is believed the references teach or suggest the functionality of the components listed in Claim 34. However, nowhere do the references give sets of components (i.e., more than one component for carrying out the given functionality) where each component of the set is associated with an individual one of a plurality of different MSO environments.

For example, at page 5 of the Final Office Action it is asserted that Curran discloses "*developing a first component adapted to communicate between said first and said second nodes (i.e., Chameleon Middleware allows communication between first and second entities; Figure 2).*" However, the Office does not identify, nor can it be identified by Applicant's review, where Curran discloses a set of components for providing the functionality of communication between the first and second nodes, much less each of the components of the set being associated with an individual one of a plurality of MSO environments. This same logic applies to the remaining sets of second and third components recited in Claim 34 as well.

Given that neither Curran nor Patki discloses sets of components for performing the given functionalities, it is further simply not reasonable to assert that either reference also teaches, in response to a request for a particular application from a CPE within an individual one of the plurality of different MSO environments, the computer program of the head-end apparatus further selecting for assembly and delivery individual ones of the set of first, second, and third components, the selection comprising selection of individual ones of the sets specific to the individual one of the plurality of different MSO environments within which the requesting CPE is located, as is recited in Claim 34.

Therefore, it cannot be reasonably asserted that Claim 34 is rendered obvious given Curran and/or Patki, whether taken alone or in combination.

Applicant further submits that the references cited by the Examiner do not identify or solve the problem addressed by the invention of Claim 34 thereby providing another independent basis for refuting the Office's position regarding the obviousness of the claim.

"[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Spuntable, 405 F.2d 578, 585 (CCPA 1969). {emphasis added} See MPEP 2141.02. A problem addressed by the invention of Claim 34 herein relates to selecting for assembly and delivery from a plurality of components which are associated to several different MSO networks components which are specific to a particular one of a plurality of MSO networks within which a requesting CPE is located. The teachings of Curran are merely aimed at providing a mechanism for delivery of a single application in fragments to a plurality of devices (see e.g., page 948, second column, last paragraph, under the heading "III. THE CHAMELEON FRAMEWORK"); Curran in no way recognizes the problem identified and solved by the invention of Claim 34. Patki is aimed at providing a selectable depacketization module for depacketizing data streams.

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Hence, Claim 34 is patentably distinguishable over the art cited by the Office, and respectfully not rendered obvious thereby.

5 **Claims 35-45** – Without addressing the merit or propriety of the rejection of these claims with respect to Curran and/or Patki, Applicant has by this paper cancelled Claims 35-45 without prejudice, thereby rendering the rejections thereof moot.

Claim 46 – Applicant respectfully traverses the Office's rejection of Claim 46 as being unpatentable over Curran in view of Patki.

10 The Office has failed to indicate where it is believed either reference teaches or suggests a software application adapted to be utilized by more than one application having permissions from an OCAP monitor and simultaneously running on the CPE as recited in Claim 46. Applicant respectfully submits that none of the references cited by the Examiner, including Patki and/or Curran, teach or suggest the aforementioned
15 limitation.

 Curran merely discloses utilization of the Chameleon middleware by the devices and the building of an application. The application in Curran is nowhere discussed as being utilized by more than one application having permission from an OCAP monitor and simultaneously running on the CPE. Rather, the application having Chameleon
20 middleware in Curran is the only application discussed as being utilized on the CPE. Other applications, including applications having permissions from an OCAP monitor, are simply not discussed. Patki is similarly deficient.

 However, in the interest of furthering prosecution, Applicant has by this paper amended Claim 46 to recite that (i) the first software application has permissions from an
25 OCAP monitor, and (ii) at least one of the plurality of components comprises a shared component which is adapted to be utilized by one or more second applications also having permissions from an OCAP monitor and simultaneously running on the CPE. Support for this amendment may be found at, *inter alia*, page 24, lines 22-26 and page 25, line 24 – page 26, line 9 of Applicant's specification as filed.

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As noted above, neither Curran nor Patki discloses software applications having permissions from an OCAP monitor. Claim 46 as amended herein discloses a first software application and one or more second applications having permissions.

5 Claim 46 further recites at least one of the plurality of components comprising a shared component which is adapted to be utilized (by the first software application and) by one or more second applications running simultaneously on the CPE. Although Patki discloses a Java media framework (JMF) application program interface (API) which is useable across multiple protocols and media types (see e.g., col. 12, lines 61-65), Patki does not disclose a component of the JMF API (i.e., utilized by the JMF API application)
10 being shared by one or more second JMF API (or other applications) running simultaneously on the CPE.

Therefore, Claim 46 as amended herein distinguishes over the art of record and is not rendered obvious thereby.

15 **Claims 50-54** – Applicant respectfully traverses the Office’s rejection of independent Claim 50 and dependent Claims 51-54 as being unpatentable over Curran in view of Patki.

The Office has provided no citation to where it is believed that either reference teaches or suggests developing at least one path to the media interface components, the
20 path being accessible only to authorized entities as recited in Claim 50. Applicant submits that neither reference teaches or suggests the aforementioned limitation.

Curran merely discloses utilization of the Chameleon middleware by the devices. Even if one were to assume *arguendo* that the Chameleon middleware comprises a media interface component (a point which Applicant does not necessarily concede), neither
25 reference discloses developing at least one path thereto. Still further, none of the references teach or suggest an authorized entity, much less the path being accessible only to an authorized entity.

However, in order to further distinguish the invention of Claim 50, Applicant has by this paper amended the claim to recite: (i) receiving a plurality of media interface

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components, individual ones of the components adapted to implement different ones of a plurality of network-specific protocol, (ii) developing a configured application by selecting individual ones of said plurality of components to be utilized within a single software application, and (iii) multiple paths to the individual ones of the plurality of media interface components are utilized to enable simultaneous use of the individual ones of the plurality of media interface components in multiple distinct software applications. Support for these amendments may be found at, *inter alia*, page 15, lines 17-22, page 23, lines 5-10 and lines 23-31, page 24, lines 13-15, and page 24, line 31 – page 25, line 8 of Applicant's specification as filed.

Neither Curran nor Patki teaches or suggests the aforementioned limitations. For example, Patki merely discloses a JMF API that can be used across multiple protocols and media types (see e.g., col. 12, lines 61-65). However, there is simply no teaching or suggestion in Patki of there being multiple paths to individual ones of the components of the JMF API to enable simultaneous use of these components in multiple distinct JMF API.

Therefore, Claim 50 as amended herein distinguishes over the art of record.

Claims 55-56 – Without addressing the merit or propriety of the rejection of these claims with respect to Curran and/or Patki, Applicant has by this paper cancelled Claims 55-56 without prejudice, thereby rendering the rejections thereof moot.

Claim 61 – Without addressing the merit or propriety of the rejection of these claims with respect to Curran and/or Patki, Applicant has by this paper cancelled Claim 61 without prejudice, thereby rendering the rejections thereof moot.

Claims 67-72 – Without addressing the merit or propriety of the rejection of these claims with respect to Curran and/or Patki, Applicant has by this paper cancelled Claims 67-72 without prejudice, thereby rendering the rejections thereof moot.

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2. Per page 9 of the Final Office Action, Claims 22-24 and 47-49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Curran in view of Patki and further in view of Logston, et al. (U.S. Patent No. 6,941,341; hereinafter referred to as "Logston").

Without addressing the merit or propriety of the rejection of these claims with respect to Curran, Patki and/or Logston, Applicant has by this paper cancelled Claims 22-24 and 47-49 without prejudice, thereby rendering the rejections thereof moot.

New Claims

By this paper, Applicant has added new Claims 73-81 as follows.

1. New independent Claim 73 corresponds generally and without limitation to the subject matter of Claim 46. New independent Claim 73 further recites that (i) the first software application has permissions from an OCAP monitor application to permanently identify individual ones of the plurality of components within the CPE by attachment of prefixes to each, and (ii) the plurality of second software applications utilize the prefixes to make use of the individual ones of the plurality of components thereby sharing these across multiple applications. Support for these limitations may be found at, *inter alia*, page 8, lines 12-16, page 24, line 27 – page 25, line 8 and page 25, lines 9-16 of Applicant's specification as filed. The foregoing, when taken in combination with the remaining limitations of Claim 73, distinguish over the art of record. New dependent Claims 74-77 depend from new independent Claim 73.

Support for new dependent Claim 74 may be found at, *inter alia*, FIG. 2 and the description relating thereto in Applicant's specification as filed.

New dependent Claim 75 corresponds generally and without limitation to previous Claim 47.

Support for new dependent Claim 76 may be found at, *inter alia*, page 25, lines 9-18 of Applicant's specification as filed.

Support for new dependent Claim 77 may be found at, *inter alia*, page 24,

lies 27-31 of Applicant's specification as filed.

2. New independent Claim 78 corresponds generally and without limitation to the subject matter of Claim 50. New independent Claim 78 further recites (i) modifying a path identifier of individual ones of the plurality of media interface components, (ii) enabling the individual ones of the media interface components to be called by more than one software application via the modified path identifiers, (iii) the individual ones of the plurality of media interface components each being useful with individual ones of the one or more specific protocols, and (iv) eliminating redundancy by enabling the more than one software applications to be developed by calling one or more of the individual ones of the components via respective ones of the path identifiers simultaneously. Support for these limitations may be found at, *inter alia*, page 8, lines 12-16, page 24, line 27 – page 25, line 8 and page 25, lines 9-16 of Applicant's specification as filed. The foregoing, when taken in combination with the remaining limitations of Claim 78, distinguish over the art of record. New dependent Claims 79-81 depend from new independent Claim 78.

– Support for new dependent Claim 79 may be found at, *inter alia*, page 25, lines 14-17 of Applicant's specification as filed.

– Support for new dependent Claim 80 may be found at, *inter alia*, FIG. 2 and the supporting discussion thereof in Applicant's specification as filed.

– New dependent Claim 81 corresponds generally and without limitation to previous Claim 53.

No new matter had been added by way of new Claims 73-81. Applicant further submits that each of Claims 73-81 distinguishes over the art of record and is in condition for allowance.

Other Remarks

Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Program), as well as the right to prosecute claims of different scope

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in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

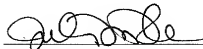
If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES, PC

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